UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Russell Allen,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Motion Pursuant to Fed.Civ.R.P. 60(b)(6)
Request for Relief

Russell Allen, Pro Se
Reg No. 74365-053
Florence FCI
PO Box 6000
Florence, CO 81226

RULE 60 (b)(6)/SECOND SUCCESSIVE

Request for relief pursuant to Fed.R.Civ.P. 60(b)(6). Comes now, Petitioner Russell Allen, pro se, moves this honorable court pursuant to Fed.R. Civ.P. 60(b)(6) for relief from judgment entered.

Pro se litigants submissions are construed liberally "to raise the strongest arguments that they suggest." Diaz v. United States, 517 F.3d 608, 613 (2nd Cir. 2008) (citation omitted.)

RULE 60(b)(6)

The purpose of Rule 60(b) is to strike a balance "between serving the ends of justice and preserve the finality of judgments." Harris v. City of New York, 2012 US Dist Lexis 161402 (S.D.NY.) (quoting Nemaizer v. Baker, 793 F.3d 58 (2nd Cir. 1986). Rule 60(b), however, is available only upon a showing of exceptional circumstances because it allows "extraordinary judicial relief." Nemaizer, 793 F.2d at 61. Allen's (fn. 1) compelling claims herein as explained infra, will lend definitively to what is defined as exceptional circumstances. Moreover, relief pursuant to Rule 60(b)(6) though no specific limitations must be made within reasonable time. Court(s) have recognized "reasonable time" as 18 months unless the movant show good cause for the delay or mitigating circumstances. Rowe Entmt.v. William Morris Agency Inc.,2012 US Dist Lexis 1611313 at *2 (S.D.N.Y.) (2012) (citation omitted). The cause, undue hardship, prejudice as will be outlined represents something more, ie: unusual and extreme situation where principles of equity mandate relief.

CAUSE AND PREJUDICE

Under the cause and prejudice "test" cause is defined as "some objective factor external to the defense that impeded the defendant's efforts to raise his claim(s). McCleskey v. Zant, 499 US 467, 493 (1991) (quoting Murray v. Carrier, 477 US 478-88 (1986). To demonstrate prejudice, a petitioner must show more than errors "created a possibility of prejudice, but [instead] that they

fn. 1 - Petitioner is referred to as Allen.

worked to his actual and substantial disadvantage." U.S. v. Frady, 456 US 152, 170. Cause can be found undue hardship in Allen's plight post conviction. Undue hardship in the forum of defamation of character. See Allen v. Don Diva, 2016 US Dist. Lexis 98762, see also Allen v. Don Diva Mag. Ent., 2015 US Dist. Lexis 167023 (E.D.N.Y. Dec. 10, 2015) Here, external factors, ie: Don Diva magazines, would go onto defame Allen and place a stigma on him, creating undue hardship by its false publication and establish cause. Cause and undue hardship can be found in Allen protecting and defending his name sake in the rigorous challenges of prison from unfounded allegations. To do so, when in peril, litigation would seem a daunting task. Yet, Allen did exactly that diligently despite extraordinary circumstance standing in his way. Pace v. DiGuglielmo, 544 US 408, 418 (2005). Exhibits A-D attached demonstrate cause and prejudice: administrative impediment (Ex. A), detailed written correspondence of situation (Ex. B), Letters from Case Manager (Ex. C), and detention orders (Ex. D) are duly noted. Rarely, jurist may envision the harshness of an environment, in which defamation is not settled with lawsuits. To the contrary, they are settled in a microcosm of a world (prison) with violence. This cannot parallel to civil society. In a subsequent civil ruling, Allen v. Don Diva Mag. Ent., 2015 US Dist. Lexis 167023 (E.D.N.Y. Dec. 10, 2015), this would appeared to be stated. Again, defending one's name sake figuratively, Allen v. Don Diva Mag. Ent., 2015 US Dist Lexis 167023 (E.D.N.Y. Dec. 10, 2015) and literally (prison) cannot be understated. Through the hardships of segregation, limited access to legal materials, not being able to litigate established cause and prejudice. Rule 60 (b)(6) may be used to grant relief in cases of extreme and undue hardship. United States v. Karahlias, 205 F.2d 331-33 (CA 2) (1953).

EXTRAORDINARY CIRCUMSTANCES LEND TO ALLEN'S UNREASONABLE DELAY

As stated supra, the cause constitutes extraordinary circumstances. Ap-

plicants burden to show that he pursued his claims diligently and extraordinary circumstances stood in his way. Citing Holland v. Forida, 560 US 631, 649 (2010). As stated supra, prevented Allen from timely filing. Focusing on Allen's reasons provides insight for delay. See PRC Harris, Inc. v. Boeing Co., 700 F.2d 894, 897 (2d Cir. 1983) (In order to determine "extreme hardships" to determine whether a Rule 60(b) motion was filed in a reasonable time, the court should ("scruntinize the particular circumstances of the case, and balance the interest in finality with the reason for delay.")) See also United States v. Cirami, 563 F.2d 26, 32 (2d Cir. 1977) (citation omitted). Factors beyond Allen's control are presented herein, though time has elapsed, insight can be found in Klapprott v. United States, 335 US 601 (1949). Four years after a default judgment was entered against him, he sought to reopen the matter under Rule 60(b) and was permitted to do so. Allen seeks remedy to do so.

COUNSEL EXCUSABLE NEGLECT

Attorney carelessness can constitute excusable neglect. Pioneer Investment v. Brunswick Associates, 1135 S.Ct. 1489 (1993). Mistake and inadvertence in failing to object to rulings constituted "excusable neglect" at Allen's sentencing hearing. Attorney offered [not] by way of excuse, neither by way of explaination for conduct harmful to Allen. See Pioneer, at 1489. "Excusable neglect "can include omissions through carelessness and mistake." Harmful in not preserving matters for appeal, diligence in correct sentencing calculus. Absent this neglect, the proceeding would have been different. Strickland, Id. at 694. See Murden v. Artuz, 497 f.3d 178, 198 (2d Cir. 2007). One cannot merely prevail due to belief counsel's strategy was inadequate. United States v. Sanchez, 790 F.2d 245, 246, 253 (2d Cir. 1986), see Mason v. Scully, 16 F.3d 38, 42 (2d Cir. 1994) ("Actions or omission by counsel that might be considered sound trial strategy do not constitute ineffective assistance of counsel.") However, failure to give advice as to how to deal with an offered plea bargain constitutes inef-

fective assistance of counsel. Boria v. Keane, 99 F.3d 492 (2d Cir. 1996) Discharging of duties informing terms of plea offer guidelines the strength and weakness of case against him and alternative sentences to which he would most likely be exposed. Purg v. United States, 208 F.3d 41, 45 (2d Cir. 2000). Attorney must exercise due care when advising client. How best to advise a client on one hand, failing to give advice there are a garden varieties of giving assistance. Though no fault of his own, Allen was prejudiced. The court may grant relief recognizing neglect from final judgment considering additional factors. United Coin Meter, F.2d at 845. In United Coin Meter, factors were: (1) whether plaintiff will be prejudice; (2) whether the defense has a meritorious defense; (3) whether culpable conduct of defendant led to the default. Allen answers in the apposite that: (1) plaintiff, ie :USA, would not be prejudiced; (2) as stated herein, he has a meritorious defense; (3) his conduct is not culpable for the default. United Coin Meter, 705 F.2d at 845.

2255/PROCEDURAL DEFAULT RESULTING IN MISCARRIAGE OF JUSTICE

Case law is clear that "a procedural default of even a constitutional issue will bar review under 2255 unless the defendant can meet the cause and prejudice test." Allen claim clearly fit within the ambit of the cause and prejudice test. Allen's reliance upon counsel's assumption of correction in the sentencing proceedings were paramount. Whereas here, direct appeal claims not raised are recognized as unpursuable in hebeas proceedings. Unless Allen can demonstrate both cause and prejudice. Cause, as stated supra, for the default and prejudice, respectively, arising from imposing the bar of a default or a fundamental miscarriage of justice. Strogov v. Attorney Gen. of State N.Y., 191 F.3d 188 (2d Cir. 1999). A fundamental miscarriage of justice occurs when a petitioner is factually innocent of a charge. Bousley v. United States, 118 S.Ct. 1604 (1998). Fundamental miscarriage has also been addressed when petitioner was not actually innocent of the underlying offense. Spence v. Superintendent Great

Meadow Correc. Facility, 219 F.3d 162, 171-72 (2d Cir. 2000). Where the court held that "actual innocent" can include not only innocence of the offense itself, but also at least some other instances where the purported existence of an underlying fact resulted in an increased penalty. The same, as will be outlined infra, can be attested to Allen. As in Spence, sentencing facts require Allen demonstrate his "innocence" of a sentencing condition by "clear and convincing proof." 219 F.3d at 172. Thus infra, Allen will demonstrate innocence pertaining to his sentencing condition.

GROUPING ENHANCEMENTS MISAPPLIED AFFECT ALLEN'S SENTENCING CONDITION

Per grouping provisions contained in USSG 3D1.1(a) and 3D1.4(a), which provide for calculation of offense (combined) by taking the offense level applicable to the count(s) with the highest offense level and then adding levels to account for the fact that multiple counts are involved. 3D1.4 as here, determination of combine levels, the number of units correlating, with the underline two acts: (1) murder and (2) conspiracy to commit murder. 2A1.1(a), the base offense level is the serverest 43. The violation for 18 USC 1962(c) found in USSG 2E1.1(a) and (2), which states the base offense level is 19 or the applicable underlying racketeering activity, which ever is higher. Per 2E1.1(a)(2), was applied cross referenced and reached 43, respectively. The analogue is not of issue grouping to achieve the result for additional levels is improper enhancement took place at the original sentencing. According to PSR (see page ___, paragraph ___), the underlying acts had the highest offense level of 43. Per 3D1.4, two additional levels were applied. Citing United States v. Stanley, 12 F.3d 17 (2d Cir. 1993) (Stanley I), cert. denied 511 US 1044 (1994). Remand, where the court failed, to make factual findings to support lost calculation and thereby may have improperly increased the offense level. Id. at 21. Allen's plight speaks to the latter. No factual finding rendered an increased offense level. The parties viewed the PSR's finding's presumptively

correct. No objections were made by counsel, ie: Allen's agent, while the court did not indicate an intention to depart upwardly it sentenced Allen to 360 months. BAsed in part on an offense level with a two level adjustment. Assuming arguendo the base offense level not being 45 and then capped at 43 as authorized, this is the appropriate benchmark for sentencing. See Rivera, 976 F.Supp. 2d 152 (2d Cir. 2013) (Multiple groupings yet a maximum 43 was benchmark.) Grouping scheme could serve as harmless error. See United States v. Tropiano, 50 F.3d 157, 162 (2d Cir. 1995) ("We will vacate a sentence and remand for resentencing because of misapplication of the guidelines only if we determine the error was not harmless.") The ambiguity rests in the grouping scheme. Offense level 43 is higher comparably to 19 under 2E1.1, Racketeering. The PSR calculus was not correctly calculated, thus, lending credence to USSG 3D1.4(c). Chapter 3 of this Section 3D1.4(c) states:

> "Disregard any group that is 9 or more less serious than the group with the highest offense level. Such groups will not increase the applicable offense level but may provide a reason for sentencing at the higher end of the sentencing range for the applicable level."

The statutory maximum guideline was 43, not 45, and as stated supra, the court made no mention of its intention to depart upward. See Garafola v. United States, 2d Cir. 2012 Lexis US Dist. Lexis 63, where at sentencing the court explained ("[b]ecause [the] [b]ase [o]ffense [l]evel for racketeering act two is more than nine levels higher than offense of racketeering act, the conspiracy to murder Salvatore Gravano racketeering act five conspiracy to commit extortion, the offense level is determine solely on racketeering act two, the murder.") (A base offense level of 43 is the initial beachmark.) (Initial) prior to adjustment, this illustration parallels Allen's situation. The guideline calculation is the starting point and the "initial benchmark." Gall v. United States, 552 US 38, 49 (2007). The base offense level 43, though maximum, is only an intermediate guideline calculation before other adjustments, such as, three

level downward adjustment for acceptance, USSG 3E1.1. In any event, any final guideline calculation would be limited by the adjusted statutory maximum penalty. See 5G1.1(a). After determination of final offense level, court determines total punishment. It is noted the highest offense level, pursuant to the sentencing table, is 43. Numerous 2nd Cir. Circuit RICO cases support this as stated supra. Allen adjustments are as follows: because Allen was a minor-minimal participant and no pecuniary gain was acquired, pursuant to Section 3B1.2(a); a 4-level adjustment was warranted and ironically, supported by the PSR. Further, adjustment under 3 E1.1, acceptance a 3-level adjustment was applied. Had they started at 43 minus 3E1.1, 3B1.2, Allen's guideline would have sat finally at a criminal history three, base offense 36, producing a 235 (low end) to 293 (high end). Based upon this calculus and no increase, this serves as the proper sentencing methology. Viewing the error as an error in sentencing, the prejudice is clear. United States v. Martinez-Rios, 143 F.3d 662, 671-76 (2d Cir. 1998) (Holding that arithemetical error that resulted in an increase to defendant's offense level pursuant to guideline affected his sentence.) As will be explained infra, no mandate nor issue, as outlined supra, was waived.

NO MANDATE WAS ISSUED, ALLEN'S ISSUE WAS NOT WAIVED OR THE IMPLICATIONS OF AN ISSUE NOT WAIVED

An issue is not waived, however, if a party did not at the time of the purported waiver, have both an opportunity and an incentive to raise it before the sentencing court or on appeal. See United States v. Ticchiarelli, 171 F.3d 24, 32033 (1st Cir. 2002) ("Whether there is a waiver depends not... on counting the number of missed opportunites... to raise an issue, but on whether the party had sufficient incentive to raise the issue in the prior proceedings.") (citation omitted) cert. denied subnom Bowen v. US, 528 US 850 (1999). See also United States v. Whren, 324 US App. D.C., 111 F.3d 956, 960 (D.C. Cir. 1997) ("A defendant should not be held to have waived an issue if he did not have a

reason to raise it at his original sentencing...") cert. denied, 522 US 1119 (1998). Allen's reliance on counsel, not the everyday common layman to the complexities of Rule 32 (FRCP). Thus, if a sentencing determination had no practical effect on Allen's sentence at the original sentencing but becomes relevant only after appellate review. Allen is free to challenge that determination initially as outlined supra. On remand and ultimately on reappeal, despite the failure to challenge that determination initially. Contigent upon relief, successful remand, re-opening of Hebeas proceedings would leave Allen free to challenge the Rule 32, sentencing determinations. See Whren, Id. at 960 (Holding that the district court may consider issues "made newly relevant by the court of appeals decision whether by reasoning or by the result.") Ticchiarelli, 171 F.3d at 32 (Same citing Whren) see also Atechortva, 69 F.3d at 685 (noting that a failure to make an argument at the original sentencing cannot be viewed as a waiver if that argument would have then been "purely academic.") To deprive Allen of this ability would necessarily increase the burden on the district court and appeals court because ALlen would be forced to litigate every aspect of the sentencing report in the original hearing. Even irrelevant to the immediate sentencing, determination in anticipation of the possibility that upon remand, the issue might be relevant. See Stepp v. United States, 519 US 975 (1996). Furthermore and importantly, relief or even when a remand is limited, an issue may be raised if it arises as a result of events that occur after the original sentence. See United States v. Bryson. 229 F.3d 425, 426 (2d Cir. 2000) (per curiam) (Holding that even when the remanding opinion ordered resentences at a specific offnse level, the district court could depart from this level if it were "intervening circumstances.") See also Weber v. United States, 149 F.3d 172, 178 (2d Cir. 1998) (Holding that the district court at resentencing must take into account changed circumstances.) The circumstances detailed herein and attached are left to the court's interpretation concerning Allen's claim(s)

set forth. This to some extent, reflects the general admonition that a "courts duty is always to sentence a defendant as he stands before the court on the day of sentencing." Barring the forthcoming issues, Allen stood originally sentenced before the court. Allen seeks not challenges to the conviction and the underlying acts treated as seperate counts of conviction. They are inextricably tied to the count of conviction. Allen seeks not the undoing of the intricate knot of the convictions. See United States v. Morales, 185 F.3d 74, 85 (2d Cir. 1999). In contrast relief, a resentencing to correct specific sentencing errors does not ordinarily undo the entire "knot of calculation." Allen seeks remedy/relief to the stated herein.

THE LAW OF CASE DOCTRINE PERMITS RELIEF

The law of the case doctrine has two branches: (1) requires a trial court to follow an appellate court's previous ruling on an issue in the same cases. United States v. Uccio, 940 F.2d 753, 757 (2d Cir. 1991), citing United States v. Cirami, 563 F.3d 26, 32 (2d Cir. 1977). Per se the "mandate rule." See United States v. Tenzer, 213 F.3d 34, 39-40 (2d Cir. 2000); and (2) the more flexible branch is implicated when a court considers its own ruling on an issue in the absence of an intervening ruling on the issue by a higher court. It holds "that when a court has ruled on an issue, that decision should generally be adhered by that court in subsequent stages in the same case." Uccio, 940 F.2d at 758. Unless "cogent and compelling" reasons militate otherwise. Tenzer, 213 F.3d at 39. The "mandate rule" ordinarily forecloses relitigation of all issues previously waived by a defendant or decided by the appellate court. But, upon a successful remand on relief, Allen may raise in district court issues not previously raised that were not ruled upon. See United States v. Stanley, 54 F.3d 103, 107 (2d Cir.) ("Stanley II") cert. denied, 516 US 891 (1995). Allen seeks to raise issue(s) that he did not waive by not raising them during his initial sentencing proceedings or on his previous appeal. The total offense level, im-

properly enhanced, causing Allen to languish in prison longer than necessary present a "cogent and compelling" reasons in itself with all detailed supra permitting Allen to do so. Citing Hicks v. US, 137 S.Ct. 2000, 2001 (2017) (Justice Gorsuch concurring ("For who wouldn't hold rightly a diminished view of our courts if we allowed individuals to linger longer in prison than the law requires only because we were unwilling to correct our own mistakes.") Even if an issue is barred by the law of the case, appellate courts may depart from the law of the case and reconsider the issue for "cogent and compelling" reasons. Such as intervening change of controlling law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice. See United States v. Tenzer, 213 F.3d 34, 39 (2d Cir. 2000) (citation and internal quotation omitted) Accord United States v. Minicone, 994 F.2d 86, 89 (2d Cir. 1993); and despite the second branch of the law of the case doctrine, as stated supra, district courts may similarly depart from the law of the case and reconsider their own decisions for "cogent and compelling" reasons. If those decisions have not been ruled on by the appellate court. See DiLaura v. Power Auth., 982 F.2d 73, 77 (2d Cir. 1992) Citing Doe v. N.Y. City of Dept of Social Svcs., 709 F.2d,762, 789 (2d Cir.) cert. denied subnom Catholic Home Bureau v. Doe, 464 US 864 (1993), see Minicone, 994 F.2d at 89. ("The trial court is barred from reconsidering or modifying any of its prior decision ruled upon by higher courts.") Allen's issue has not and the equity of law demands fair and just relief to correct this issue set forth. To the extent that this court is held, bound by the previous ruling of the Court of Appeals issued presented that were not ruled upon nor waived as stated supra. "Cogent and compelling reasons warrants the court review. In the alternative that this court believes that Allen is making a claim, which is better suited in a second and successive motion, per 28 USC 2255, Allen asks that the court forward the motion to the Court of Appeals for review. Courts are required to transfer such a motion to

the court, if doing, is in the interest of justice. 2244(b)(3). See Liriano v. United States, 95 F.3d 119, 123 (2d Cir. 1996), see also Brown v. Ercole, 2012 US Dist. Lexis 177523 (S.D.N.Y. Dec. 12, 2012) "A motion under Rule 60(b) may be treated as a second or successive hebeas petition if necessary to enforce the requirements of the AEDPA [Anti-Terrorism and Effective Death Penalty of 1996]" Tyler v. Anderson, 135 S.Ct. 370, 190 L.Ed. 2d 264 (2014) (citing Gonzalez, 545 US at 531-32)

CONCLUSION

Where Allen prays the court grants relief per Rule 60(b) or transfer for second successive petition if deemed appropriate.

Respectfully submitted,

Dated 9/11/19

Russell Allen

Russell Allen

Exhibit A

an exceptionally large property loss in the course of the rape would provide grounds for an upward departure. *See* §5K2.5 (Property Damage or Loss).

Background: This section provides rules for determining the offense level associated with each Group of Closely Related Counts. Summary examples of the application of these rules are provided at the end of the Commentary to this Part.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 257 and 303); November 1, 2001 (amendment 617); November 1, 2004 (amendment 674).

§3D1.4. Determining the Combined Offense Level

The combined offense level is determined by taking the offense level applicable to the Group with the highest offense level and increasing that offense level by the amount indicated in the following table:

Number of Units	Increase in Offense Level
1	none
1 1/2	add 1 level
2	add 2 levels
2 1/2 – 3	add 3 levels
3 1/2 – 5	add 4 levels
More than 5	add 5 levels.

In determining the number of Units for purposes of this section:

(a) Count as one Unit the Group with the highest offense level. Count one additional Unit for each Group that is equally serious or from 1 to 4 levels less serious.

(b) Count as one-half Unit any Group that is 5 to 8 levels less serious than the Group with the highest offense level.

(c) Disregard any Group that is 9 or more levels less serious than the Group with the highest offense level. Such Groups will not increase the applicable offense level but may provide a reason for sentencing at the higher end of the sentencing range for the applicable offense level.

Commentary

Application Notes:

1. Application of the rules in §§3D1.2 and 3D1.3 may produce a single Group of Closely Related Counts. In such cases, the combined offense level is the level corresponding to the Group determined in accordance with §3D1.3.

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Exibit B
Proff of Extraordernay
Circumstances

October 24, 2008

By First Class Mail

Mr. Russell Allen
MDC Brooklyn
P.O. Box 329002
Brooklyn, New York 11232

Re: Libel Suit Against Don Diva Magazine

Dear Mr. Allen:

Enclosed please find a copy of the Amended Summons With Notice, dated July 22, 2008. This document was filed with the New York County Clerk on July 23, 2008 (a copy of the Clerk's stamp is provided as proof of this filing). The initial filing occurred on July 3, 2008 (a copy of the filing receipt is provided for your records). The document was amended to include Don Diva Entertainment as a defendant in the action. The nature of the suit is for libel, and the judgment amount sought is $1,000,000.00.

I will keep you posted as the matter progresses.

Thank you in advance for your cooperation.

Yours truly,

Brian K. Robinson

Brian K. Robinson, Esq.

BRIAN K. ROBINSON, P.C.
Attorney at Law
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New York, New York 10035
office: (212) 722-4900 ext. 311
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February 4, 2009

By First Class Mail

Mr. Russell Allen #74365-053
MDC Brooklyn
P.O. Box 329002
Brooklyn, New York 11232

Re: Libel Suit Against Don Diva Magazine

Dear Mr. Allen:

Enclosed, please find my retainer letter which advises you of the services and fees associated with my counsel. Upon review and agreement of the retainer letter, sign and return the document to me as quickly as possible.

The next issue of Don Diva will contain a retraction of the story written about you. I am also in discussions with Don Diva's attorney regarding a settlement amount. I will send you an update by the end of the month.

Thank you in advance for your cooperation.

Yours truly,

Brian K. Robinson

Brian K. Robinson, Esq.

Enc.

already. I've done everything I wanted to do." But the judge threw out the death penalty frustrating the prosecutors on the case. "There's no chance in the world there would be a death penalty verdict in this case," stated the trial judge, US District Court Judge, Frederic Block. Even with the death penalty being dropped is still didn't look too good for preme. Emanual "Dog" Mosley testified that during the summer of 2001, Supreme approached him about the murder contracts. According to this informant, Supreme wanted to kill Singleton for "fucking" with Murder Inc, and because he fucked with E-Money Bags. The E-Money Bags contract was just a plain and simple retribution killing for the murder of Supreme's man Black Just.

What do you think of the state of the game today? What is your take on snitches today?

The game has been over for a long time. It's in a sad state of affairs. It is now designed so that the only one who can flourish is the rat. As long as he is willing to sleep with the government he can operate with out penalty. Who could you possibly trust? Once the government involves itself in local affairs that is an ominous sign. The feds always create monster's they can no longer control. These snitches are no different- it will come back to haunt them.

Treason is the highest crime in any land, punishable by death. Treason is the betrayal of one's trust or assisting the other side. Now this treachery is frowned upon and unacceptable in every segment of life, but its promoted in the black community- why not in the white community where drugs are just as prevalent? Through out history when every member of society becomes an agent of the government chaos ensues. It's neighbor against neignbor, brother against brother. People are using this to settle old scores. A rat is the lowest life form known to man- they serve no purpose on this planet. They spread disease and misery wherever they are allowed to exist. Who will allow them to infest their environment? Who could possibly feel comfortable in their presence? A man who can not accept culpability for his own actions is not a man.

"There is a profound difference between a witness who has no vested interest in a criminal activity and a snitch who benefits greatly," Supreme says. And unbeknownst to Supreme, Emanual Dog Mosley was a 5K1 frequent flyer. A 5K1 is a federal sentencing guideline policy says that if a person provides "substantial assistance" to the government regarding the crime of another person they are eligible to receive a reduced sentence for their crimes. It came out in trial that Mosley had snitched in a mid 90's Pennsylvania drug conspiracy when he was facing 20 years. As the prosecutor laid out the numerous murder and drug conspiracy counts and drug operations in New York and Baltimore- more dudes from Mosley's hit squad like Barry "Mungo" Broughton, Alvin Smiley, Eric "EBay" Moore and Russell Allen testified against Supreme. The video tape Nicole Brown made of E-Money Bags 20 minutes before he died was played for the jury. Michael Todd Harvey told the jury how he was involved selling large amounts of cocaine and heroin to Supreme in mid-90's and John "Love" Ragin, Supreme's supposed partner ed many things, among them how Supreme allegedly told him that the E-Money Bag's murder was like the Fourth of July. The prosecutor Carolyn Pokorney related how "McGriff's fingerprints were lifted from the drug stashhouse where the Baltimore detectives found the video tape of E-Money Bags tape. His fingerprints were allegedly all over the stash house, and not only the stash house but in the exact bag where the detectives found this tape.

How did snitches play a role in this last trial?

Supreme: My entire trial existed on them. They gave out 11 deals to convict 1 person. 6 of these snitches testified at my trial. I had only actually met two of them- Emanuel "Manny Dog" Mosley and Jon Ragin; [then there was] Climente "CJ" Jordan, Barry Trip, Mongo Broughton, Alvin Smiley, Michael Hardy, Terrance "Tony" Terrell, Eddie "Divine Knowledge" Oliver, Juan Romano and Phillip "Dalu" Banks. Climente "CJ" Jordan was the catalyst. He was doing 15 years in Delaware and he decided to cut his sentence at my expense. I had never met him and don't knock him. He told on Manny Dog and his crew. Manny Dog already had a 5K1 (Substantial Assistance) in 1991 in Pennsylvania- and went in for his second time at bat. Now remember in my trial the government said the guys who got killed were trying to kill me and killed my man. But all the rat's had numerous murders, drug dealing and horrendous crimes. They will all be released in 5 to 10 years- just so the government could get a conviction on me. These guys testified under oath that they would lie, have lied and would do what was necessary to receive a deal. They testified that they killed, robbed, sold drugs- and all was forgiven because they now stood with the prosecution and now we are supposed to believe that we can trust them. Would you trust a pit bull who had revealed its true nature, just because it was being held by a beautiful woman and appeared friendly? My attorney asked the jury in closing, if they encountered one of these incorrigible individuals in public would you trust them? Would you buy a car from them? Would you buy a house from them? Then how could you trust them enough to take a man's life? You can't change their nature. The government is willing to tolerate any type of [distasteful] behavior when it serves their interest.

Prosecutors went overboard portraying Supreme as this super evil gangster who couldn't possibly have been involved in any legitimate business ventures. The government's portrayal of Supreme was almost cartoonish. In McGriff's defense attorney, Runke argued, "What we don't have on these murders is wiretaps, we don't have anybody discussing murder over a wiretap, we don't have finger prints that matter. NO FINGERPRINTS THAT MATTER. NO fingerprints associated with the murders at all. Fingerprints or something related to the crime. No eyewitnesses, somebody who explains they were on the street corner and they saw McGriff and Mosley. They don't have any DNA, firearm matches, nothing compares to anything. No matches, no ballistics, nothing." But it didn't matter. What they did have was the testimony of criminals and McGriff's criminal history. Once a criminal always a criminal- except of course, if you're a government informant- then the rules don't apply.

When you were initially released from prison and you began to work on your films did you ever think that the Feds would make you a target again? Do you think that you would have been better off just "staying out the way?"

Supreme: Should I have not taken a legal opportunity out of concerns of the feds? What aggravated the feds was that I actually made a film based on a Donald Goines book with an all star cast

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February 26, 2009

By First Class Mail

Mr. Russell Allen
MDC Brooklyn
P.O. Box 329002
Brooklyn, New York 11232

Re: Libel Suit Against Don Diva Magazine

Dear Mr. Allen:

Below please find the official printed retraction of the article in Issue #30 mentioning your alleged testimony against Kenneth McGriff. It appears in Issue # 36, Year 2009 of DON DIVA Magazine, which is currently on newsstands.

I will keep you posted as the matter progresses further.

Yours truly,

Brian K. Robinson, Esq.

RETRACTION

IN DONDIVA MAGAZINE ISSUE #30 entitled, "THE GOOD THE BAD THE UGLY", in the article *"the BAD"; the Kenneth "Supreme"* McGriff story, it was mistakenly reported that Dennis Crosby, Russel Allen, and Eric *"E-bay"* Moore testified against *Kenneth "Supreme" McGriff*, when in fact Kenneth McGriff has since clarified that this is not true. Dennis Crosby, Russel Allen and Eric *"E-Bay" Moore DID NOT testify against Kenneth "Supreme" McGriff.*. This interview was conducted under very unusual circumstances as the author of story was incarcerated with McGriff before his trial. McGriff was then moved during the story process to a high security facility with limited communication. Don Diva apologies to Dennis Crosby, Russell Allen and Eric Moore's families for the misrepresentation. Don Diva at all times strives to maintain integrity in our reporting and always strive to report the truth.

U. S. Department of Justice

Federal Bureau of Prisons

SERO

3800 Camp Creek Pkwy SW
Bldg 2000
Atlanta, GA 30331

March 29, 2011

Russell Allen
Reg. No. 74365-053
FCI Talladega
Box 1000
Talladega, AL 35160

Re: Freedom of Information Request No. 11-05104

Dear inmate Allen:

This is in response to your request for records which are maintained by the Bureau of Prisons. Specifically, you are requesting information regarding the time you have spent in the Special Housing Unit.

The Attorney General has exempted the Bureau of Prisons from certain provisions of the Privacy Act of 1974. Title 5 U.S.C. Section 552a(j). Therefore, all material granted, excised from documents, or denied herein has been processed under the authority of an alternative means of access, which is part of said exemption. The exemption, including the alternative means of access, is set forth in Title 28 Code of Federal Regulations, Section 16.97. Accordingly, your access rights are limited to those provided by the non-exempted portions of the Privacy Act of 1974 and the Freedom of Information Act, Title 5 U.S.C. Section 552 and as implemented by Title 28 Code of Federal Regulations, Part 16, Subpart A and D. The procedures established for use by the Bureau of Prisons are outlined in Program Statement 1351.5, Release of Information, and Program Statement 5800.11, Inmate Central File, Privacy Folder and Parole Commission File.

We are enclosing the Sentry quarter assignment which indicates the day you were placed in SHU and the day you were released back into the unit.

Pursuant to Title 28 Code of Federal Regulations, Section 16.9 or 16.45, the material herewith may be appealed by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530. Your appeal must be received by OIP within 60 days of the date of this letter. Both the appeal letter and face of the envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

Jeff Campbell
SERO Attorney

SERAE 531.01 * INMATE HISTORY * 03-17-2011
PAGE 001 * QUARTERS * 09:05:29

REG NO..: 74365-053 NAME....: ALLEN, RUSSELL
CATEGORY: QTR FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
TDG	D06-004L	HOUSE D/RANGE 06/BED 004L	12-02-2010 1242	CURRENT
TDG	R01-001L	HOUSE R/RANGE 01/BED 001L	12-02-2010 0958	12-02-2010 1242
OKL	C01-303U	HOUSE C/RANGE 01/BED 303U	11-08-2010 1945	11-18-2010 0725
BRO	K04-825L	HOUSE K/RANGE 04/BED 825L	07-06-2010 1756	11-08-2010 0835
BRO	K03-803U	HOUSE K/RANGE 03/BED 803U	07-06-2010 1210	07-06-2010 1756
BRO	G04-404U	HOUSE G/RANGE 04/BED 404U	06-28-2010 1347	07-06-2010 1210
BRO	G02-416L	HOUSE G/RANGE 02/BED 416L	06-25-2010 1908	06-28-2010 1347
BRO	R02-001L	HOUSE R/RANGE 02/BED 001L	06-25-2010 1541	06-25-2010 1908
BRO	R02-001L	HOUSE R/RANGE 02/BED 001L	03-25-2010 0231	03-25-2010 0420
BRO	K03-824L	HOUSE K/RANGE 03/BED 824L	03-10-2010 1115	03-25-2010 0231
BRO	K03-824U	HOUSE K/RANGE 03/BED 824U	01-26-2010 1456	03-10-2010 1115
BRO	K04-824U	HOUSE K/RANGE 04/BED 824U	01-25-2010 1728	01-26-2010 1456
BRO	K03-802U	HOUSE K/RANGE 03/BED 802U	01-14-2010 1853	01-25-2010 1728
BRO	Z05-920LAD	HOUSE Z/RANGE 05/BED 920L AD	01-04-2010 0913	01-14-2010 1853
BRO	G04-423L	HOUSE G/RANGE 04/BED 423L	12-14-2009 1428	01-04-2010 0913
BRO	Z06-917LDS	HOUSE Z/RANGE 06/BED 917L DS	12-10-2009 1158	12-14-2009 1428
BRO	Z06-904LDS	HOUSE Z/RANGE 06/BED 904L DS	11-19-2009 1518	12-10-2009 1158
BRO	Z05-904LAD	HOUSE Z/RANGE 05/BED 904L AD	11-11-2009 1438	11-19-2009 1518
BRO	Z05-903LAD	HOUSE Z/RANGE 05/BED 903L AD	11-10-2009 1608	11-11-2009 1438
BRO	J05-717L	HOUSE J/RANGE 05/BED 717L	11-06-2009 1008	11-10-2009 1608
BRO	J05-716L	HOUSE J/RANGE 05/BED 716L	10-05-2009 1025	11-06-2009 1008
BRO	J06-722L	HOUSE J/RANGE 06/BED 722L	09-30-2009 1515	10-05-2009 1025
BRO	K07-803L	HOUSE K/RANGE 07/BED 803L	09-03-2009 0643	09-30-2009 1515
BRO	G06-405U	HOUSE G/RANGE 06/BED 405U	08-06-2009 1533	09-03-2009 0643
BRO	Z07-913UAD	HOUSE Z/RANGE 07/BED 913U AD	07-20-2009 0705	08-06-2009 1533
BRO	I03-621L	HOUSE I/RANGE 03/BED 621L	06-18-2009 1408	07-20-2009 0705
BRO	I03-621U	HOUSE I/RANGE 03/BED 621U	01-26-2009 1230	06-18-2009 1408
BRO	I03-626L	HOUSE I/RANGE 03/BED 626L	12-21-2008 0853	01-26-2009 1230
BRO	I01-607U	HOUSE I/RANGE 01/BED 607U	12-21-2008 0843	12-21-2008 0853
BRO	I03-626L	HOUSE I/RANGE 03/BED 626L	12-19-2008 1418	12-21-2008 0843
BRO	I02-628U	HOUSE I/RANGE 02/BED 628U	12-19-2008 1059	12-19-2008 1418
BRO	Z08-917LDS	HOUSE Z/RANGE 08/BED 917L DS	12-17-2008 1220	12-19-2008 1059
BRO	Z07-917LAD	HOUSE Z/RANGE 07/BED 917L AD	12-08-2008 1218	12-17-2008 1220
BRO	Z01-005LAD	HOUSE Z/RANGE 01/BED 005L AD	11-19-2008 1103	12-08-2008 1218
BRO	Z01-013LAD	HOUSE Z/RANGE 01/BED 013L AD	10-30-2008 1452	11-19-2008 1103
BRO	Z01-018LAD	HOUSE Z/RANGE 01/BED 018L AD	10-29-2008 2050	10-30-2008 1452
BRO	Z01-001LAD	HOUSE Z/RANGE 01/BED 001L AD	10-29-2008 2045	10-29-2008 2050
BRO	I01-629L	HOUSE I/RANGE 01/BED 629L	08-28-2008 1151	10-29-2008 2045
BRO	I01-615U	HOUSE I/RANGE 01/BED 615U	07-18-2008 0949	08-28-2008 1151
BRO	I02-602L	HOUSE I/RANGE 02/BED 602L	07-17-2008 1510	07-18-2008 0949
BRO	Z05-912UAD	HOUSE Z/RANGE 05/BED 912U AD	07-15-2008 1529	07-17-2008 1510

G0002 MORE PAGES TO FOLLOW . . .

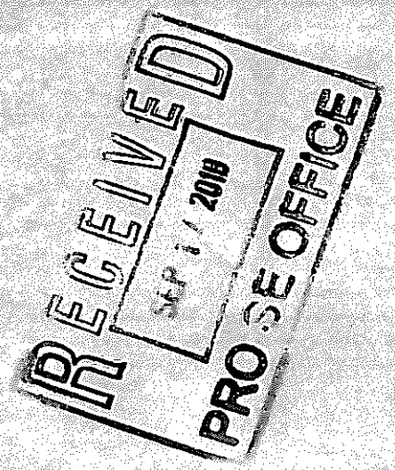
SERAE 531.01 * INMATE HISTORY * 03-17-2011
PAGE 002 OF 002 * QUARTERS * 09:05:29

REG NO..: 74365-053 NAME....: ALLEN, RUSSELL
CATEGORY: QTR FUNCTION: PRT FORMAT:

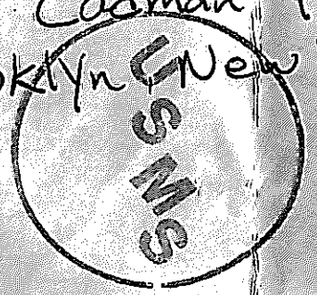
FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
BRO	G02-404U	HOUSE G/RANGE 02/BED 404U	07-11-2008 2316	07-15-2008 1529
BRO	R02-001L	HOUSE R/RANGE 02/BED 001L	07-11-2008 2002	07-11-2008 2316
BRO	R02-001L	HOUSE R/RANGE 02/BED 001L	12-27-2006 0440	12-27-2006 0750
BRO	J04-704L	HOUSE J/RANGE 04/BED 704L	10-27-2006 1108	12-27-2006 0440
BRO	S03-001L	HOUSE S/RANGE 03/BED 001L	10-25-2006 1221	10-27-2006 1108
BRO	J04-706U	HOUSE J/RANGE 04/BED 706U	09-20-2006 0804	10-25-2006 1221
BRO	C01-004U	HOUSE C/RANGE 01/BED 004U	09-13-2006 0733	09-20-2006 0804
BRO	C04-004U	HOUSE C/RANGE 04/BED 004U	08-04-2006 1854	09-13-2006 0733
BRO	G01-405L	HOUSE G/RANGE 01/BED 405L	08-02-2006 2141	08-04-2006 1854
BRO	R02-001L	HOUSE R/RANGE 02/BED 001L	08-02-2006 1730	08-02-2006 2141

G0000 TRANSACTION SUCCESSFULLY COMPLETED

Russell Allen 71365-053
FCI Florence
Florence, CO 8126



United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201



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MAIL